

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

BRANDON WAGNER,

Plaintiff,

v.

No. CIV 10-1191 MCA/KBM

MATT MURRAY,
LANCE A. PYLE,
CARLOS ORTIZ,

Defendants.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

This matter is again before the Court *sua sponte*. By order entered on July 20, 2011, Plaintiff was allowed twenty-one (21) days to provide a current address for serving Defendant Ortiz, the only remaining Defendant in this action. Plaintiff has not responded to the order.

Failure to comply with a court order or statutory requirements may constitute grounds for dismissing a complaint. *See Baker v. Suthers*, 9 F. App'x 947, 950 (10th Cir. 2001). Furthermore, Plaintiff has not shown why his claims against Defendant Ortiz should not be dismissed for failure to effect service. *See Caldwell v. Martin*, Nos. 95-6101, 95-6381, 1996 WL 731253, at *1 (10th Cir. Dec. 20, 1996) (noting plaintiff's obligation to provide address); *and see Petersen v. Carbon County*, No. 98-4010, 1998 WL 458555, at *4 (10th Cir. Aug. 6, 1998) ("[Defendant] was not timely served because [Plaintiff] had not provided his correct address"); *but cf. Olsen v. Mapes*, 333 F.3d 1199, 1204 (10th Cir. 2003); *Kelly v. Wilson*, No. 10-3218, 2011 WL 2311875, at *3 (10th Cir. June 13, 2011) (stating that, where Plaintiff provides address, the court is obligated under 28 U.S.C. § 1915 to ensure compliance with the complicated requirements of Fed. R. Civ. P. 4(i) for serving United States officers or agencies). Here, Defendant Ortiz is not an officer of the United States, and no

address has been provided. Because Defendant Ortiz has not been served and Plaintiff has not responded to the July 20 order or sought leave to obtain Defendant Ortiz's address through discovery, *see Caldwell*, 1996 WL 731253, at *2, Plaintiff's claims against Defendant Ortiz will be dismissed without prejudice.

Because Defendant Ortiz is the only remaining Defendant, dismissal of claims against him would effectively terminate this action. The Court will defer entry of judgment and dismissal of the action for fourteen (14) days from entry of this Order and will give due consideration to a request for relief from this Order.

IT IS THEREFORE ORDERED that Plaintiff's claims against Defendant Ortiz are DISMISSED without prejudice.



UNITED STATES DISTRICT JUDGE